



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 86-5

August 18, 1986

SUBJECT: Tax Law Changes Enacted During the 1986 Regular Session of the Delaware General Assembly

PERSONAL INCOME TAX

1. Personal Income Tax Rate Cut. - House Bill No. 765, Chap. 394, Vol. 65, Laws of Delaware, enacted a reduction of approximately 9% in personal income tax rates in all brackets beginning in tax year 1987. Pre-existing law had imposed a self-executing rate increase effective for tax year 1988 unless there occurred an annual increase of 6,000 full-time equivalent jobs in Delaware between June 1, 1984, and May 31, 1987. This Act also reduced those future contingent rates by 9%. As a result of this legislation, Delaware's top bracket will be reduced from 9.7% to 8.8% for taxable incomes in excess of \$40,000.

2. Credit for Members of Volunteer Ambulance or Rescue Services. - Senate Bill No. 199, Chap. 397, Vol. 65, Laws of Delaware, provides a \$75 (maximum) credit for active members of a Delaware rescue service for expenses actually incurred for the purchase of clothing, equipment, motor fuel or other essential items necessary to perform the functions of a member. This Act is effective for tax year 1987.

3. Elimination of Limitation on Charitable Contributions Deduction. - Senate Bill No. 459, Chap. 403, Vol. 65, Laws of Delaware, struck the limitation on deductible charitable contributions, heretofore 20% of adjusted gross income. As a result, deductability of contributions is controlled by limitations found in the Internal Revenue Code. The Act is effective for tax year 1987.

4. Deductions for Health Insurance Expenses of Self-Employed Individuals. - Senate Bill No. 578, Chap. 461, Vol. 65, Laws of Delaware, provides an itemized deduction for one-half the cost of a self-employed person's health care insurance for the person and his or her family. The deduction is limited to one-half of the difference between health insurance costs and itemized medical deductions. In addition, a self-employed person for purpose of this Act is one who derives more than one-half his or her gross income from self-employment. This Act is effective for tax year 1987.

5. Credit for Fire Company Auxiliary Members. - Senate Bill No. 378, Chap. 518, Vol. 65, Laws of Delaware, extended the existing credit (\$75 maximum) for clothing, equipment, motor fuel and essentials necessary to perform the duties of a firefighter to individuals who have been members of Delaware fire company auxiliaries for at least one year. This Act is effective for tax years beginning in 1987.

LICENSE TAXES

1. Reduction in Manufacturers' Gross Receipts Tax Rate. - Senate Bill No. 458, Chap. 388, Vol. 65, Laws of Delaware, reduces the manufacturers' gross receipts tax rate to .25% from the current .3%. This Act is effective for receipts on or after January 1, 1987.

2. Elimination of Federal Excise Tax From Fuel Dealers' Gross Receipts. - Senate Bill No. 469, Chap. 389, Vol. 65, Laws of Delaware, eliminates the federal excise tax on motor and special fuel from the definition of "gross receipts" subject to tax. The elimination applies to both wholesalers and retailers. This Act is effective for receipts on or after January 1, 1987.

3. Increase in Retail Monthly Exclusions. Senate Bill No. 576, Chap. 390, Vol. 65, Laws of Delaware, increases to \$25,000 retailers' monthly exclusions from the gross receipts tax. These exclusions had previously been \$5,000 for restaurants and \$10,000 for other retailers. This increase is effective for receipts on or after January 1, 1987.

4. Creation of Monthly Exclusion. - House Bill No. 559, Chap. 392, Vol. 65, Laws of Delaware, creates a \$6,000 monthly (\$18,000 quarterly) exclusion from gross receipts tax for all license tax categories not previously enjoying an exclusion from tax, i.e., business and occupational licensees, contractors, personal property lessors, food processors, grain and feed dealers, and farm machinery retailers. These exclusions are effective for receipts beginning in 1987.

5. Increase of Filing Thresholds. - Senate Bill No. 457, Chap. 402, Vol. 65, Laws of Delaware, permits employers to pay withholding taxes quarterly (rather than monthly) provided withholding liability for the first two months of the quarter does not exceed \$600 rather than \$200 under existing law, thus eliminating monthly filings for approximately 3,000 employers. This bill also permits business and occupational licensees to file annual (rather than quarterly) returns if their quarterly taxable receipts do not exceed \$15,000, rather than the current \$6,000. Further, under this bill contractors, manufacturers, retailers, and wholesalers may pay gross receipts taxes quarterly rather than monthly if their taxable gross

in any month do not exceed \$7,500 rather than \$2,000 under current law. This Act is effective for receipts on or after January 1, 1987.

6. Exemption of Certain Sales of Grain From the Gross Receipts Tax. - Senate Bill No. 488, Chap. 406, Vol. 65, Laws of Delaware, eliminates the gross receipts tax on sales of grain so long as the grain is purchased from the owner of a farm or nursery and so long as the purchase occurs in Delaware. This Act is effective for receipts occurring after December 31, 1986.

7. Revision of Contractor Bonding Requirements. - House Bill No. 558, Chap. 476, Vol. 65, Laws of Delaware:

(a) Non-resident contractors and subcontractors must post bonds with the Department of Finance in the amount of 6% of the contract to guarantee their liability for Delaware income taxes, Delaware occupational and business license fees, Delaware unemployment compensation contributions and income taxes which they are obligated to withhold from wages of their employees and to pay over to the taxing authorities;

(b) Requires that the non-resident contractor or subcontractor post his bond before commencing construction in Delaware rather than within 15 days after he begins construction (which is what the present §375 permits);

(c) Increases the maximum fine for each violation from \$5,000 to \$10,000;

(d) Imposes criminal liability (misdemeanor) by fines up to \$3,000 and/or imprisonment of up to 6 months;

(e) Provides that a non-resident contractor or subcontractor who is in compliance with §375 shall, upon his request, be issued a certificate of compliance by the Department of Finance;

(f) Deletes the requirement that each non-resident contractor shall obtain a license fee for each single contract in which the gross amount of the contract is in excess of \$1,000 and the requirement to post a bond equal to double the amount of gross payment under each such contract in excess of \$1,000 multiplied by the rate set forth in subsection (b) of §2502. Conditions the issuance by the Division of Revenue of a contractors business license to any person on the requirement that such person be in compliance with §375 of this Title and has filed certificates of notice certifying appropriate notification to the Delaware Department of Labor and has complied with the Delaware Workmen's Compensation Laws; and

(g) Requires every architect, professional engineer, contractor

or construction manager to report to the Delaware Department of Finance within 10 days after entering into any contract with a non-resident contractor or non-resident subcontractor. Provides that any architect, professional engineer, contractor, or construction manager who fails to furnish required statements shall be guilty of an offense and penalized in the amount of \$10,000 for each such occurrence. Existing statute provides for a penalty of \$25.00.

This Act is effective for all contracts executed or first effective on or after January 1, 1987.

8. Inclusion of Catalog and Mail Order Distributors as Wholesalers. House Bill No. 617, Chap. 478, Vol. 65, Laws of Delaware, provides that catalog and mail order distributors are treated as wholesalers under the license tax laws provided they do not own or operate retail operations in Delaware. This Act is effective July 8, 1986.

9. Exclusion of Intermediate Products from Manufacturers' Tax. - House Bill No. 644, Chap. 481, Vol. 65, Laws of Delaware, excludes from the manufacturers' gross receipts tax sales of goods to be included in a product subsequently to be manufactured in Delaware. This Act is effective for gross receipts after December 31, 1986.

OTHER

1. Escheat of Underlying Shares. - House Bill No. 261, Chap. 351, Vol. 65, Laws of Delaware, makes clear that Subchapter IV of Chapter 11 of Title 12 of the Delaware Code, which governs the escheat to the State of Delaware of types of unclaimed property not specifically dealt with elsewhere in Chapter 11, covers shares of corporate stock, when the dividends or other sums payable on such property have themselves been abandoned under the current statute because they have not been claimed for a period in excess of seven years. The Delaware State Escheator has interpreted the current statute as covering such "underlying shares"; the statutory language supporting that interpretation is clarified by this Act.

2. Public Utility Tax Reduction. - Senate Bill No. 456, Chap. 387, Vol. 65, Laws of Delaware, reduces the public utilities tax to 4.25% from the current 5.0%. The Act also eliminates the 10% rebate given to qualifying businesses, in that their effective rate with the rebate is currently 4.5%. The Act takes effect January 1, 1987 for services performed or distributed on or after that date.

3. Additional Requirements for Transient Retailers. - House Substitute No. 1 for House Bill No. 427, Chap. 391, Vol. 65, Laws of Delaware, requires transient retailers (as defined) to file an

application with the Director of Revenue setting forth, among other things, the name and address of the applicant, particulars concerning its incorporation, a statement concerning the nature of its proposed business and a description of the goods to be sold, and the name and address of its registered agent. Under the Act, the Director of Revenue serves as agent for substituted service of process. The transient retailer is required to post a bond of \$1,000 (or lesser amount in the discretion of the Director of Revenue) to secure the payment of State taxes and fines. The Act provides certain criminal penalties for its violation. Its provisions become effective January 1, 1987.

4. Inheritance Tax Liberalization. - House Bill No. 560, Chap. 393, Vol. 65, Laws of Delaware, eliminates all restrictions on treating a stepchild as a Class B beneficiary. Thus a stepchild's inheritance is subject to the Class B rates irrespective of his or her age at the inception of the relationship or its duration. The Act also raises the Class B exemption from \$10,000 to \$25,000 and Class C from \$3,000 to \$5,000. In addition, the Act makes clear that, although the due date of a return is delayed where the estate is in litigation, interest commences when the return would have been due but for the litigation. The Act is effective for decedents on or after January 1, 1987.

5. Realty Transfer Tax Loopholes. - House Bill No. 462, Chap. 426, Vol. 65, Laws of Delaware, requires that the realty transfer tax be paid even when there is no recordation of the conveyance where under regulations to be promulgated by the Secretary of Finance, a conveyance or series of conveyances of intangible interests is properly characterized as a sale of real property. The Act offers a safe harbor where the beneficial owners before the conveyance(s) own 80% or more of the beneficial interest afterwards. In addition, the Act makes clear that the tax lien provisions of 25 Del. C. Chap. 29 do not apply to the realty transfer tax. The Act takes effect January 1, 1987.

6. Tobacco Products. House Bill No. 745, Chap. 441, Vol. 65, Laws of Delaware, sets forth definitions enabling enforcement of the tax on the wholesale of non-cigarette tobacco products. Regulations have been published making the tax collectible on sales on or after October 1, 1986.



Robert W. Chastant
Director of Revenue